

B. Southwestern Bell Appropriately Captures the Flow-Through of Orders Submitted Electronically

AT&T and El Paso/PacWest take issue with the way flow through is calculated for UNE-P orders. See AT&T Comments at 47-50; AT&T's Willard Decl. ¶¶ 34-43; El Paso/PacWest Joint Comments at 16-17. As explained in the reply affidavit of William R. Dysart, these CLECs dispute SWBT's interpretation of the business rules for Performance Measure 13 — percent of orders eligible that flow through. Dysart Reply Aff. ¶ 35.³⁹ The Business Rule for PM 13 requires SWBT to use, as the denominator, "the total number of MOG Eligible orders and orders that would flow through EASE within the reporting period." Dysart Aff. Attach. C at 36-38; see also Dysart Reply Aff. ¶ 36. SWBT has interpreted this rule to require it, in calculating flow through for UNE and UNE-P orders, to include in the denominator only those CLEC orders that are MOG eligible. Dysart Reply Aff. ¶ 36. Because EASE is used for resale only, there are no UNE or UNE-P orders that would flow through EASE. Id. n.40. As a result, only MOG-eligible UNE and UNE-P orders are included in the denominator for the PM 13 measurements that report UNE and UNE-P flow through. Id.; Kelly Reply Aff. ¶ 10.

AT&T disagrees with this interpretation and claims that the business rule requires SWBT to include in the denominator those UNE-P orders that, despite not being MOG-eligible, AT&T claims would flow through EASE if they were submitted as a retail order by SWBT. AT&T's Willard Decl. ¶ 37.⁴⁰ Both the Missouri PSC Staff and Ernst and Young, however, have

³⁹ As AT&T acknowledges, this issue is currently being reviewed by the Texas PUC as part of its six month review of SWBT's performance measures. AT&T at 47; AT&T's Willard Decl. ¶¶ 32, 43; see also Dysart Reply Aff. ¶ 35. The Texas PUC has yet to reach any conclusion on this matter. Dysart Reply Aff. ¶ 35.

⁴⁰ AT&T also claims that SWBT's EASE flow through rate is understated, contending that there are certain order types that SWBT claims flow through EASE that do not, increasing the base of orders from which SWBT calculates retail flow through and decreasing the

concluded that SWBT's interpretation of the PM 13 business rule is reasonable. Kelly Reply Aff. ¶ 10; see also Dysart Reply Aff. ¶¶ 38-39, 62 n.60; Ham Aff. ¶ 81 & Attach. FF. In any event, even if AT&T's interpretation were correct, it would result in almost no change in EDI flow through results and have a minimal impact on LEX flow-through results. See Dysart Reply Aff. ¶¶ 40-42 (presenting results of recalculation of PM 13).

El Paso Networks/PacWest and McLeodUSA complain about SWBT's LEX flow-through rates, independent of the interpretation of the business rule. El Paso Networks/PacWest at 16-17; McLeodUSA at 25-27. This Commission has twice rejected similar arguments that SWBT's LEX flow through rates are discriminatory. Kansas/Oklahoma Order ¶ 146; Texas Order, 15 FCC Rcd at 18444, ¶ 180, n.489; see also Massachusetts Order ¶ 79. SWBT's flow through rates for LEX in Missouri compare favorably with those approved by the Commission in SWBT's prior applications. See Dysart Reply Aff. ¶ 17 & Attach. A (PM 13-02); Kansas/Oklahoma Order ¶ 146 n.403; Texas Order, 15 FCC Rcd at 18444, ¶ 180 n.489; see also Ham Aff. ¶¶ 190-200 (LEX flow through rates for individual CLECs vary widely, indicating that flow through is within a CLECs' control).

El Paso Networks/PacWest also complain that LEX flow through rates result in increased manual handling of CLEC orders. El Paso Networks/PacWest at 16-17. This Commission, however, has found that "evidence in the record indicates that SWBT has procedures in place to ensure accuracy of these manual processes." Texas Order, 15 FCC Rcd at 18445-446, ¶ 182. As Southwestern Bell's systems, processes and procedures are region-wide, this finding applies equally to Missouri. See Ham Aff. ¶¶ 13-20; D. Smith Aff. ¶¶ 4-7; Noland Aff. ¶¶ 7-14;

percentage reported for SWBT's retail flow through. AT&T's Willard Decl. ¶ 40. This claim is simply false; the order types referenced by AT&T flow through EASE. Dysart Reply Aff. ¶ 43. Therefore, SWBT's EASE flow through rate is accurately calculated.

VanDeBerghe Aff. ¶¶ 3-8; Final Missouri PSC Order at 36; Kansas/Oklahoma Order ¶ 111; see also Kansas/Oklahoma Order ¶ 144 n.397.

C. Remaining OSS Concerns

Third-Party Test. WorldCom contends, as it did in the Kansas and Oklahoma proceeding, that SWBT's application should be rejected because it has not shown OSS-readiness in Missouri through commercial experience or a third-party test. WorldCom at 14. This Commission has explicitly rejected that very contention. Kansas/Oklahoma Order ¶ 118. As explained in the initial affidavit of Elizabeth Ham, Southwestern Bell offers CLECs a uniform set of OSS interfaces, all of which are currently being used at commercial volumes. Ham Aff. ¶¶ 21-34; see also Tebeau Aff. Attach. A (showing total Missouri-specific orders processed). In the Kansas/Oklahoma Order, this Commission relied on SWBT's commercial experience in Texas in reviewing those systems. See Kansas/Oklahoma Order ¶¶ 108, 118; see also Ham/Noland Joint Reply. Aff. ¶¶ 6-7.⁴¹ WorldCom offers no basis for this Commission to deviate from that sensible approach.

SWBT's Performance Results. Two CLECs raise a number of complaints about SWBT's performance on various measurements. Those complaints, however, are based on data that is months old and performance measurements that exist for diagnostic purposes; further, they ignore SWBT's recent excellent performance. See Dysart Reply Aff. ¶¶ 15-27. SWBT's performance for PM 29-06 (Percent SWBT Caused Missed Due Dates – No Field Work – UNE) has been outstanding, missing just 0.83 percent of the CLECs' due dates over the last 12 months.

⁴¹ As WorldCom's general assertion should be rejected on its face, so too should the claim that SWBT's OSS are untested for UNE-P orders in Missouri. WorldCom at 14-15; Z-Tel at 8. See Kansas/Oklahoma Order ¶ 108. The claim of El Paso Networks and PacWest, at 15-16, that the scalability of SWBT's OSS — specifically its service centers — is in question has been addressed and rejected by this Commission as well. See Kansas/Oklahoma Order ¶ 116.

See Dysart Reply Aff. ¶¶ 17, 27 & Attach. B. Further, in the past three months the disparity has been just 0.46 percent. Dysart Reply Aff. Attach. B (PM 29-06). A less than 0.5 percent “disparity” is unlikely to have had a significant competitive impact. See Kansas/Oklahoma Order ¶ 38. With regard to PM 37-01 (Percent Trouble Report Rate for Residential POTS Resale), Southwestern Bell met parity in the past three months (January, February, and March) and the difference in December was only 0.3 percentage points. See Dysart Reply Aff. Attach. A. In addition, the inaccuracies in the LMOS database had no meaningful impact on this measurement. See id. ¶ 64; LMOS Joint Reply Aff. Attach. A.

For the submeasurements in PM 38 (Percent Missed Repair Commitments), SWBT provided parity service in each of the past six months for PMs 38-01 and 38-02, missed a total of 17 repair commitments over the past 6 months for PMs 38-03, 38-04, and 38-06 combined (less than 1 miss per measure per month), and met parity in three of the past six months for PM 38-05. See Dysart Reply Aff. Attach. B. Further, for PM 38-05 the relative difference in SWBT's performance for CLECs, as compared to that provided its retail operations, has been slight during the last three months (January: 2.10 percent; February: 0.74 percent; and March: 2.65 percent) and there is no evidence of any adverse competitive impact. See id. ¶ 17.

Line Sharing/Splitting OSS Functionality. AT&T alleges that SWBT does not demonstrate that it provides the OSS functionality necessary to order line sharing over fiber-fed loops. AT&T Comments at 38-43; AT&T's Finney Decl. ¶¶ 23-35. Because SWBT is not required to provide “line sharing” over fiber-fed loops, see infra Part II.A, there is no requirement that it provide OSS functionality to order this non-existent product. See also Massachusetts Order ¶ 164 n.512.

MCA. McLeodUSA contends that SWBT rejects all orders for Metropolitan Calling Area ("MCA") service ordered via UNE-P. See McLeodUSA's Schwartz Aff. ¶ 10. This claim is surprising, because at least two CLECs are successfully ordering UNE-P service with the MCA option for their end users in the St. Louis metropolitan area. See Ham/Noland Joint Reply Aff. ¶ 8. Further, because McLeodUSA has been unwilling to provide SWBT with the Purchase Order Number ("PON") for any LSR requesting MCA service via UNE-P that was rejected, SWBT is unable to do more than speculate as to the cause of McLeodUSA's problems. See id. ¶¶ 9, 13.

MCA service — which enables customers in, for example, a suburb of St. Louis to call (and receive calls from) people residing in St. Louis on a locally dialed basis — is designated by a "special" NPA-NXX combination, which SWBT's switches are programmed to recognize. See id. ¶¶ 10-11. The CLEC Handbook contains detailed instructions for ordering MCA service (also called Extended Area Service "EAS"). See id. ¶¶ 12-13. In ordering MCA service via UNE-P, the CLEC indicates the MCA option simply by populating a correct "MCA" NPA-NXX and the correct enhanced line code ("ELC"). If, contrary to those instructions, McLeodUSA is using a resale USOC or FID, or fails to populate the correct ELC, when ordering MCA via UNE-P, then its order will be rejected. See id. ¶ 13; see also id. ¶ 16.

Billing. This Commission has twice found that "SWBT provides nondiscriminatory access to its billing functions." Kansas/Oklahoma Order ¶ 163; Texas Order, 15 FCC Rcd at 18461-62, ¶ 210. In its initial filing, SWBT demonstrated that it provides Missouri CLECs with nondiscriminatory access to its billing functions using the same interfaces, methods, and procedures employed across SWBT's region. See Dysart Aff. Attach. B (PMs 14-19); Ham Aff. ¶¶ 230-240. See generally McLaughlin Aff.; Final Missouri PSC Order at 45-46, 77. Two

commenters raise complaints about SWBT's billing OSS;⁴² neither provides reason to conclude that SWBT does not provide nondiscriminatory access to its billing OSS.

NALA/PCA makes a number of allegations concerning SWBT's billing accuracy and dispute resolution process. NALA/PCA at 10-11. For example, this commenter asserts that "as much as 20 percent of the charges listed on each SBC bill are incorrect." Id. But these unsupported allegations are belied by SWBT's performance on the relevant submeasures. See Dysart Reply Aff. ¶ 34; see also Texas Order, 15 FCC Rcd at 18462-63, ¶ 212 (rejecting a nearly identical claim raised by this commenter); Ham/Noland Joint Reply Aff. ¶¶ 20-21.

IV. MISCELLANEOUS ISSUES

A. Track A and Local Competition

The Missouri local market is undeniably open to competition. Facilities-based CLECs now serve, conservatively, at least 264,000 lines in Missouri, more than 63,000 of which are provided to residential customers. See Tebeau Reply Aff. ¶ 3 & Table 1. Moreover, that level of competition is growing fast. In March 2001 alone, interconnection trunks provided to CLECs in Missouri grew by 5.7 percent, CLEC E911 listings increased by 4.4 percent, and UNE-platforms grew by 4.7 percent. See id. ¶ 4. CLECs are clearly taking advantage of the meaningful opportunity to compete that SWBT provides in Missouri.

Although no commenter seriously disputes that Southwestern Bell satisfies Track A in Missouri, a few commenters challenge Southwestern Bell's estimates of the extent of local competition. See AT&T Comments at 56-57; El Paso/PacWest Joint Comments at 28; Sprint Comments at 1-2. These claims are insubstantial. Thus, for example, AT&T attempts to

⁴² McLeodUSA contends that billing problems arose from SWBT's failure properly to change its operating company number, but acknowledges that SWBT has corrected that number and the issue has been resolved. McLeodUSA at 26-27.

downplay the extent of local competition by simply ignoring resale, and tabulating carriers that rely upon UNE-based entry separate from those that rely on their own facilities. AT&T Comments at 56-57. The Commission, however, has rejected this approach, concluding repeatedly that all three “paths of entry into the local market” must be examined in evaluating the presence of local competition. E.g., Michigan Order, 12 FCC Rcd at 20595, ¶ 96; see Tebeau Reply Aff. ¶ 7. Likewise, El Paso and PacWest claim that Southwestern Bell’s numbers cannot be trusted, “because of inaccurate use of 911 listing data.” El Paso/PacWest Joint Comments at 28. But it is the CLECs who are responsible for entering the E911 data, and, in light of the important public purpose those entries serve, Southwestern Bell has every reason to believe they do so accurately. Finally, Sprint does nothing more than note the population difference between Missouri, on the one hand, and Kansas and Oklahoma, on the other, apparently on the theory that the Commission lowered the bar for the latter two states because they are “rural.” See Sprint Comments at 2. But even apart from the total lack of support for that theory in the Commission’s order, the fact is that the local market in Missouri is undoubtedly open to competition, as evidenced by the many thousands of lines served by the dozen facilities-based providers in the market. See Tebeau Reply Aff. ¶¶ 3, 11 & Table 2.

B. Interconnection

Complaining about issues that have long-since been resolved, McLeodUSA contends that SWBT has failed to provide collocation consistent with FCC requirements. McLeodUSA Comments at 19-24. Yet the terms and conditions of SWBT’s collocation offering in the M2A are the same terms and conditions that the FCC reviewed and approved in Kansas, and that the Missouri PSC recommended. See Sparks Reply Aff. ¶ 5. SWBT has a binding legal obligation to provide these terms and conditions under the M2A. Id. Although McLeodUSA complains

that SWBT did not offer collocation pursuant to a tariff until last year, McLeodUSA acknowledges that this is only because the Missouri PSC had expressly rejected McLeodUSA's position that a tariff should be required. See McLeodUSA Comments at 21-22.⁴³

Bringing its claims closer (yet not quite) into the present, McLeodUSA next asserts problems with the collocation tariff now in effect. McLeodUSA undermines its own claim, however, by acknowledging (as it must) that the parties "have recently settled most of the terms and conditions issues [and] SBC has just filed a revised collocation tariff on April 4, 2001 incorporating such resolved issues." McLeodUSA Comments at 22 (emphasis added); see also Sparks Aff. ¶ 17 (noting McLeodUSA was party to a "Unanimous Stipulation Agreement"). Moreover, and despite McLeodUSA's claims suggesting the contrary, the Missouri collocation business is booming: operational collocation arrangements grew by 562, or 472 percent, from July 2000 to February 2001. See Hughes Reply Aff. ¶ 63. In sum, McLeodUSA concedes that it in fact has no complaint regarding the terms and conditions for collocation in Missouri.

The same is true for collocation pricing, about which McLeodUSA tells a similarly confusing and, in the end, irrelevant story. See McLeodUSA Comments at 19-23. As McLeodUSA comes to recognize, collocation prices are the same as those adopted in Texas, and McLeodUSA nowhere claims those rates are unreasonable. Id. at 22. Although those prices may

⁴³ Compare SWBT Sparks Reply Aff. ¶ 16 (noting that no CLEC challenged the Missouri PSC's 1996 holding for nearly three years, raising the issue only when SWBT was about to update the record regarding its section 271 application); Hughes Reply Aff. ¶ 64 ("over the past four years, during which collocation has been provisioned on an [individual case] basis in Missouri, there have been no formal complaints filed by any CLEC relating to a collocation price quote in Missouri") with Kansas/Oklahoma Order, Separate Statement of Commissioner Furchtgott-Roth (where CLECs have not pursued complaints arising out of interconnection agreements, "I think there is little reason that the Commission should undertake, as an initial matter, a review of their claims that the Bell company has not complied with section 251's requirements").

change pursuant to a “ruling by the MPSC after further testimony, a hearing and briefs,” McLeodUSA will no doubt have an opportunity to be heard at that proceeding. Moreover, McLeodUSA is in no position to complain now about future rate-setting proceedings: “No carrier is immune from the effect of future resolutions of disputed issues.” Texas Order, 15 FCC Rcd at 18475-76, ¶ 237.

McLeodUSA's next claim, regarding the issue of a single point of interconnection, is based on a misreading of the M2A. McLeodUSA mistakenly claims the M2A requires CLECs to have a point of interconnection in every exchange outside of the relevant Metropolitan Calling Area (“MCA”), McLeodUSA Comments at 24, but that is simply not the case. A CLEC may select one point of interconnection in a LATA. Sparks Aff. ¶ 12. Moreover, as the Missouri PSC has noted, McLeodUSA stated that it was “fine” with the M2A language on this issue. Id. ¶ 13. In any case, the language in the M2A is virtually identical to the language approved by the FCC in the T2A, K2A, and O2A, and there is consequently no reason for the Commission to diverge from those holdings here. Id.; Kansas/Oklahoma Order ¶ 232; Texas Order, 15 FCC Rcd at 18390, ¶ 78.

Nor is there merit to McLeodUSA's stale complaint regarding SWBT's September 2000 performance in meeting trunk installation dates in particular areas (rather than statewide). As SWBT demonstrated at page 14 of its application, under revised PM 73-01 (Percentage of Installations Completed Within the Customer-Requested Due Date), SWBT's timely installation of 100 percent of all trunks ordered by CLECs in January 2001 and 93.2 percent of such trunks in February far exceeded parity with SWBT's retail operations. See Dysart Aff. Attach. B (PM 73-01); see also id. ¶ 40. Under the previous version of PM 73, SWBT achieved parity in 11 out of 12 months in 2000. Id. ¶ 41 (“During all of 2000, SWBT missed only 8.6 percent of CLECs’

interconnection trunk due dates, far less than the 41.4 percent of SWBT's interconnection trunk due dates that were missed.""). Recently available data show that this trend continues, as SWBT both met the 95 percent benchmark and far exceeded parity for this measure in March 2001. See Dysart Reply Aff. ¶ 18 & Attachs. A & B (PM 73-01).

C. Unbundled Loops

SWBT provides nondiscriminatory access to all of the features, functions, and capabilities of the local loop in Missouri, in full compliance with the terms of the 1996 Act and the Commission's implementing rules and decisions. Specifically, SWBT has pre-ordering, ordering, and provisioning processes in place that collectively ensure that CLECs receive high quality loops in a timely basis. Further, in those limited instances in which CLECs report loop troubles, SWBT provides timely and high quality maintenance and repair services. In response to overwhelming evidence demonstrating SWBT's nondiscriminatory performance in provisioning unbundled loops, CLECs offer nothing but the isolated and unsubstantiated anecdotes that the Commission deemed ineffectual in the Texas and Kansas/Oklahoma proceedings. As the FCC emphasized in its Texas Order, its Kansas/Oklahoma Order, and its Massachusetts Order, anecdotal evidence cannot undercut SWBT's "objective performance data that demonstrate that it satisfies the statutory nondiscrimination requirement." Texas Order, 15 FCC Rcd at 18375, ¶ 50; See Kansas/Oklahoma Order ¶¶ 28-29; Massachusetts Order ¶ 11. SWBT's overall performance in Missouri, as captured by the objective and comprehensive measures that are continually perfected and updated to address new concerns through the 6-month review, clearly satisfies the checklist requirement for the provision of unbundled loops by offering CLECs a meaningful opportunity to compete in the provision of local telecommunications services. See Dysart Reply Aff. ¶¶ 3-4, 7-14, 24-33. SWBT will

nevertheless address those comments that raise significant issues concerning checklist compliance.

xDSL-capable loops and related services. As SWBT demonstrated in its opening brief, SWBT provides nondiscriminatory access to xDSL-capable loops using the same pre-ordering, ordering, and provisioning processes as those used in Texas, Kansas, and Oklahoma. See Chapman Aff. ¶¶ 3-7. SWBT also has complied fully with its obligations under the Line Sharing Order, the Line Sharing Reconsideration Order, the UNE Remand Order, and the D.C. Circuit's Ascent decision.⁴⁴ See Chapman Aff. ¶ 10; Brown Aff. ¶¶ 30-49; Brown/Habeb Joint Reply Aff. ¶¶ 5-10 (discussing SWBT's compliance with Ascent decision). The same performance metrics used in Texas, Kansas, and Oklahoma – which are disaggregated to capture SWBT's performance for both stand alone xDSL loops and line sharing – demonstrate that SWBT provides competitors a meaningful opportunity to compete in the market for advanced services in Missouri. In addition, SWBT has established a fully operational separate affiliate for the provisioning of advance services in Missouri, and has been providing xDSL service exclusively through ASI since January 12, 2000. See Brown Aff. ¶ 10.

xDSL loop provisioning. SWBT's comprehensive performance data demonstrates unequivocally that SWBT provides nondiscriminatory access in the pre-ordering, ordering, and provisioning of xDSL-capable loops and related services in Missouri. During each of the past four months, SWBT has installed stand-alone xDSL loops well within the relevant 5-day benchmark for PM 55.1 (average installation interval). See Dysart Reply Aff. Attach. B. In

⁴⁴ While CLECs have yet to order line shared loops in significant numbers, SWBT has demonstrated that it can handle commercial volumes of line sharing orders by providing such service for ASI. Since ASI operates just like any other CLEC, its experience unquestionably demonstrates that SWBT provisions line shared loops in a manner that provides an efficient competitor with a meaningful opportunity to compete.

addition, SWBT has missed a mere 17 of 1273 installation appointments (PM 58-09) over the past three months, an average of only 1.3 percent. See id. Once provisioned, CLEC xDSL-capable loops rarely have problems, and SWBT's 2.2 percent average over the past year easily exceeds the 3 percent benchmark for PM 65-08 (trouble report rate). See id. And on the rare occasions when CLEC xDSL-loops do report trouble, SWBT promptly restores service (PM 67-08 (mean time to restore)); once repaired, the trouble rarely recurs (PM 69-08 (percent repeat reports)). CLECs receive loop makeup information more quickly than does ASI, and SWBT consistently exceeds the relevant FOC return benchmark for orders submitted via LEX (PM 5.1-01), via EDI (PM 5.1-03), and manually (PM 5.1-05). See id.

In light of SWBT's stellar record, it is not surprising that CLEC comments on SWBT's performance in provisioning xDSL-capable loops are almost nonexistent. The prevailing silence stands in stark contrast to the contentious disputes surrounding SWBT's xDSL performance in Texas, Kansas, and Oklahoma, and Verizon's performance in New York and Massachusetts. Indeed, only two CLECs filed comments touching upon SWBT's xDSL performance in Missouri, and their joint comments discuss but a single isolated aspects of SWBT's performance. Despite their narrow focus, El Paso Networks, LLC ("El Paso") and PacWest Telecom, Inc. ("PacWest") still manage to distort SWBT's excellent record, and to ignore the applicable legal standard and this Commission's past treatment of the same issue.

While El Paso and PacWest contend that SWBT has failed to provide nondiscriminatory access to xDSL-capable loops in Missouri, see El Paso/PacWest Joint Comments at 21-24, they not only fail to demonstrate competitive harm, but they also rely on a single measure which, in fact, directly refutes their claims. See Kansas/Oklahoma Order ¶ 189 (CLEC challenging checklist compliance must submit evidence of competitive harm). Though El Paso and PacWest

go so far as to describe SWBT's performance in PM 60-08 (percent missed due dates due to LOF – DSL – no line sharing) as “disturbing,” El Paso and PacWest Joint Comments at 22, SWBT has missed a mere 2.5 percent of installation appointments over the past four months, less than half of the 5 percent benchmark. See Dysart Reply Aff. Attach. B. Moreover, as CLEC orders for line sharing have gone up, the percentage of missed installation appointments due to lack of facilities has dropped precipitously – just as SWBT has predicted over vehement CLEC objections. The joint commenters assertion that “SWBT offers no justification for its ‘lack of facilities’” is nonsensical. SWBT simply cannot provision facilities that do not exist. The composition of SWBT's legacy network is competitively neutral: the structure of the network plant impacts all carriers alike, and the joint commenters cannot, and indeed have not even attempted to prove competitive injury. Moreover, in the increasingly rare instances (in light of line sharing) where SWBT's existing loop plant lacks facilities for serving a particular customer, SWBT rapidly performs whatever work is necessary to provision the requested loop. See Dysart Reply Aff. Attach. B (PM 61-08) (average delay days for lack of facilities was a mere 2.3 days over the past four months).

Line sharing performance. SWBT employs the same processes and procedures for the pre-ordering, ordering, and provisioning of the high frequency portion of the loop (“HFPL”) that this Commission endorsed in the Kansas/Oklahoma Order. See Kansas/Oklahoma Order ¶¶ 215-219; Chapman Reply Aff. ¶ 3. But unlike in Kansas and Oklahoma, where unaffiliated CLECs had ordered but a single HFPL UNE at the time this Commission approved SWBT's application, Missouri CLECs have begun placing a significant number of line sharing orders over the past four months. Indeed, SWBT provisioned 411 HFPL UNEs for unaffiliated CLECs in the first three months of 2001, compared to a total of only 77 line-shared circuits for the preceding six

months. See Dysart Reply Aff. Attach. B (PM 58-10). The undisputed record belies McLeodUSA's assertion that SWBT "has provisioned virtually no line sharing to Missouri CLECs." McLeodUSA Comments at 32.

While SWBT's performance has generally been excellent, SWBT acknowledged in its opening brief that its performance data indicates that SWBT has been missing more installation appointments for CLEC line sharing orders than it has for ASI. See Southwestern Bell Br. at 58-59; Dysart Aff. ¶ 66. While El Paso/PacWest seek to exploit PM 58-10 (percent SWBT-caused missed due dates – DSL – line sharing), see El Paso and PacWest Joint Comments at 22, they altogether ignore the fact that the disparity is largely accounted for by SWBT's decision to offer SWBT-owned splitters. Here is yet another instance where SWBT has gone beyond its legal obligations in an effort to assist CLECs, only to have those same CLECs attack SWBT's checklist compliance on the basis of the very actions that they themselves requested.

As this Commission repeatedly has made clear, SWBT has no obligation to purchase splitters for CLEC use. See Texas Order, 15 FCC Rcd at 18516-17, ¶ 327; Line Sharing Order, 14 FCC Rcd at 20949, ¶ 76. Nevertheless, SWBT voluntarily agreed to make SWBT-owned splitters available to CLECs in response to numerous requests made during SWBT's line sharing collaborative. See Chapman Aff. ¶ 77; Dysart Aff. ¶¶ 66-68. SWBT thereby became responsible for purchasing, installing, and inventorying the splitters used by CLECs to engage in line sharing. Under SWBT's existing provisioning systems, a line sharing order will "error out" whenever a splitter has yet to be logged into the SWITCH database.⁴⁵ See VanDeBerghe Reply

⁴⁵ As Bill VanDeBerghe explains in his reply affidavit, when a SWBT engineer installs a splitter in a central office, the engineer must fill out a "SWITCH input form," which is e-mailed to the database manager for inputting into SWITCH. Root-cause analysis indicated that the failure of SWBT engineers timely to forward SWITCH input forms to the database manager was one of two major causes responsible for the number of CLEC line sharing orders that error out of

Aff. ¶ 5. A manual review of due dates missed for CLEC line sharing orders indicates that miscellaneous equipment inventory problems were responsible for fully 72 percent of the SWBT-caused misses from January through March 2001. See id. ¶ 10.

ASI, by contrast, which exclusively utilizes its own splitters, is itself responsible for the purchase, installation and inventorying of the splitters it uses for line sharing. See id. ¶¶ 9-11. Accordingly, any time a miscellaneous equipment problem causes a missed due date, ASI is assigned responsibility for the miss, not SWBT. ASI's ME-related misses are not captured in SWBT's performance data, creating an artificial disparity when comparing the number of due dates missed for line sharing orders. When ME-related missed due dates are factored out of SWBT's performance in provisioning CLEC line sharing orders, thereby ensuring an apples to apples comparison of the work performed in filling an order, as well as the factors that can result in a SWBT-caused missed due date, SWBT easily meets the parity standard. See Kansas/Oklahoma Order ¶ 210 (recognizing that "differences in the mix of work performed" can explain facial disparities in performance data). While SWBT is diligently working to identify and resolve ME-related provisioning issues, and the preliminary indications are that SWBT's efforts have been successful, see VanDeBerghe Reply Aff. ¶ 8, the fact remains that no CLEC has even tried to demonstrate that it has suffered any competitive injury. If CLECs truly believed themselves to be at a competitive disadvantage, those CLECs could be expected to

SWBT's provisioning systems and result in a missed due date. See VanDeBerghe Reply Aff. ¶¶ 4-5, 7-10. Because splitters are classified as "miscellaneous equipment" (or "ME"), these problems are considered ME related. The second primary cause of CLEC missed due dates was the length of time it took to resolve CLEC orders that error out of the system. See id. ¶ 6. SWBT is currently working on developing a mechanical system that will automatically identify the engineer responsible for splitter installation and, as a result, expedite the escalation of orders that error out. Preliminary results for April already indicate a marked improvement in SWBT's performance for PM 58-10. Id. ¶¶ 7-8.

move towards provisioning their own splitters. That no CLEC has chosen to do so further illustrates that SWBT's provisioning processes are nondiscriminatory.

Line splitting. WorldCom and McLeodUSA continue to challenge SWBT's application on the ground that SWBT has yet to make line splitting available over the UNE-P. See McLeodUSA Comments at 32-33; WorldCom Comments at 16-18. WorldCom contends that SWBT "provides insufficient detail on the terms and conditions" of its line splitting offering, an argument that is substantively identical to that previously made by WorldCom in the Kansas and Oklahoma proceedings. WorldCom Comments at 16. Meanwhile, McLeodUSA reiterates stale arguments that AT&T originally made, and this Commission rejected, in the Texas proceedings. See McLeodUSA Comments at 33. The Commission properly rejected each of these same arguments in the Texas, Kansas, and Oklahoma proceedings, and it should do so here as well. See Texas Order, 15 FCC Rcd at 18515-17, ¶¶ 323-329; Kansas/Oklahoma Order ¶¶ 220-221; WorldCom Comments at 17.

There is no merit to McLeodUSA's assertion that SWBT or the M2A somehow precludes CLECs from engaging in line splitting. See McLeodUSA Comments at 32-33. Any Missouri CLEC can provide integrated voice and data service over a single loop, as can a CLEC and a designated data provider. See Chapman Aff. ¶¶ 102-104. Indeed, Missouri CLECs can engage in line splitting under the exact same terms available in Texas, as well as in Kansas and Oklahoma. See id. ¶ 102; Kansas/Oklahoma Order ¶ 221. McLeodUSA's claim that SWBT must provide splitters for CLECs that seek to engage in line splitting is similarly unavailing. See Texas Order, 15 FCC Rcd at 18516-17, ¶ 327; Line Sharing Order, 14 FCC Rcd at 20949, ¶ 76; Chapman Reply Aff. ¶ 13. This Commission has already determined that there is nothing discriminatory about requiring UNE-P providers engaged in line splitting to provision their own

splitter, and nothing in McLeodUSA's conclusory comments call this settled law into question. As the Commission explained in the Texas Order, there is "no evidentiary or conceptual basis for concluding that SWBT's practices in these two different contexts [*i.e.* line sharing and line splitting] somehow amount to 'discrimination.'" 15 FCC Rcd at 18517, ¶ 329.

WorldCom's claim that SWBT has failed to provide a sufficient elaboration of the method by which CLECs can engage in line splitting also rings hollow. The processes and procedures for establishing a line splitting arrangement in Missouri are identical to those that this Commission endorsed in the Texas Order and the Kansas/Oklahoma Order. See Texas Order, 15 FCC Rcd at 18515-16, ¶ 325; Kansas/Oklahoma Order ¶ 220. As the Commission explained in the Texas Order as well as in the Line Sharing Reconsideration Order, CLECs need only order an unbundled xDSL-capable loop to their collocated splitter and DSLAM, together with unbundled switching and shared transport. See Texas Order, 15 FCC Rcd at 18515-16, ¶ 325; Line Sharing Reconsideration Order ¶ 19. The exact same pre-ordering and ordering processes that CLECs utilize to order each of these UNEs are equally available when a CLEC seeks to engage in line splitting. See Chapman Reply Aff. ¶ 9. Moreover, new connect orders flow through SWBT's systems in precisely the same manner as any other UNE order, see *id.*, and the prices for the UNE combinations are simply the sum of the underlying UNE prices. In addition, SWBT has been working with interested CLECs to develop improvements like a new single-order process for reusing facilities that are part of an existing UNE-P or line sharing arrangement. See *id.* ¶ 10. Though WorldCom attacks SWBT's plans to roll out this new LSR process in October, WorldCom Comments at 17, the fact remains that SWBT began work on developing these process improvements when CLECs first requested it. See Chapman Reply

Aff. ¶ 10. Nothing more is required under the Line Sharing Reconsideration Order. See Line Sharing Reconsideration Order ¶ 21.

Loop provisioning. SWBT has demonstrated that it provides nondiscriminatory access to a wide array of loop types, providing Missouri CLECs a meaningful opportunity to compete in the local exchange market. SWBT readily admits that its performance has not always been perfect; but perfection has never been the relevant standard. See, e.g., Texas Order, 15 FCC Rcd at 18498, ¶ 284. It is therefore essential to recognize that SWBT's performance measurement plan is but a means of assessing whether SWBT provides nondiscriminatory access to unbundled loops. CLECs all too often focus exclusively on a single individual measure, trying to transform a minor deviation from the relevant benchmark into proof of discrimination. In so doing, they ignore the only relevant question – whether the local service market has been opened up to competition. No single performance measure can alone provide an answer. See Kansas/Oklahoma Order ¶ 32 (“a disparity in performance for one measure, by itself, may not provide a basis for finding noncompliance with the checklist”).

DS1 loops. Across loop types, SWBT provisions new loops more rapidly for CLECs than it does for its own retail customers. SWBT demonstrated as much in its opening brief, and the record evidence establishing this point has not been refuted. See Dysart Aff. ¶¶ 53-123. While a handful of CLECs allege that SWBT has failed to provide parity in the provisioning of DS1 loops, see NuVox Comments at 11-15; El Paso/PacWest Joint Comments at 23, they do so only by ignoring SWBT's actual performance record. See Dysart Reply Aff. ¶¶ 8-14.

NuVox, for example, asserts that SWBT's “on time performance in delivering DS1 loops has been persistently poor in Missouri, particularly in the largest market area in the state – St. Louis.” NuVox Comments at 12. But NuVox distorts the very performance measure – PM 58-

06 (percent SWBT-missed due dates – DS1 loop with test access) – upon which it purports to base its claim. As William R. Dysart explains, SWBT has been in parity for PM 58-06 during each of the last 6 months in the Kansas City market area, during each of the last twelve months in St. Louis, and for 11 of the past 12 months for the state of Missouri as a whole. See Dysart Reply Aff. ¶ 8. In absolute terms, the percentage of missed installation appointments for DS1 loops has dropped precipitously in response to SWBT initiatives that include advancing projects that invest in new facilities, early escalation of orders likely to face a lack of facilities, and dispatching field technicians to assess facility availability prior to the customer due date. See VanDeBerghe Reply Aff. ¶ 17. SWBT's progress has been steady, with the percentage of missed appointments declining from 43 percent in November 2000 to only 17.3 percent in March 2001. see Dysart Reply Aff. ¶ 9, and with preliminary figures indicating that SWBT's performance improved even further in April. See VanDeBerghe Reply Aff. ¶ 17. Perhaps even more important, SWBT's dramatic improvement occurred at a time of rapidly increasing DS1 loop orders. See Dysart Reply Aff. ¶ 9 n.10.⁴⁶

El Paso and PacWest's assertion that SWBT fails to meet the Commission's standards for DS1 loop provisioning is similarly belied by SWBT's actual performance. See El Paso/PacWest Joint Comments at 23. SWBT has consistently provisioned DS1 loops far more quickly for CLECs than for its own retail customers. Over the past year, CLECs have received DS1 loops in an average of 5 days, as compared to 14.2 days for SWBT retail customers. See Dysart Reply Aff. ¶ 11. While SWBT continues to work towards improving its on-time performance, the fact

⁴⁶ As William R. Dysart explains, order volumes grew by 52 percent from the last quarter of 2000 to the first quarter of 2001 (393 versus 258). During this same time period, the percentage of missed due dates fell from 38.3 percent to 23.26 percent. See Dysart Reply Aff. ¶ 9 n.10. This record indicates more than just "some improvement." DOJ Evaluation at 7 n.23.

remains that SWBT has consistently provided CLECs better than parity performance. Taken together with SWBT's record of provisioning high quality DS1 loops and performing both rapid and quality maintenance and repair services, as well as the complete absence of any CLEC claim of competitive injury, there can be no doubt that SWBT provides CLECs a meaningful opportunity to compete. See id. ¶¶ 12-14.

Hot cut loops. As SWBT demonstrated in its opening brief, SWBT provisions high-quality coordinated conversions in a timely manner and with a minimum of service disruption. For both coordinated hot cut ("CHC") and frame due time ("FDT") conversions, SWBT meets or exceeds the criteria established by this Commission for demonstrating compliance with checklist item (iv). See Texas Order, 15 FCC Rcd at 18489, ¶ 264; New York Order, 15 FCC Rcd at 4114-15, ¶ 309; Southwestern Bell Br. at 68-70; D. Smith Aff. ¶¶ 35-39.

El Paso and PacWest's assertion that SWBT "fails to provide an acceptable quality of service" for FDT conversions has no basis in the record. El Paso/PacWest Joint Comments at 25. Over the past six months, CLECs have filed provisioning trouble reports for just 2 (out of 1434) CHC conversions and 2 (out of 1511) FDT conversions. See Dysart Reply Aff. ¶ 32. These figures, taken together with SWBT's performance on PM 114 (percent premature disconnects), demonstrate that SWBT easily surpasses the 5 percent outages of conversion standard for both CHC and FDT conversions. See D. Smith Aff. ¶¶ 38-39.

D. The Metropolitan Calling Area Plan

In its comments, McLeodUSA seeks to relitigate before this Commission a dispute that has been thoroughly and finally resolved by the Missouri PSC. McLeodUSA argues that SWBT improperly refused to recognize CLECs as participants in the Missouri PSC's MCA Plan, thereby engaging in anticompetitive conduct inconsistent with the public interest. McLeodUSA

has grossly misrepresented the record with respect to the MCA issue. SWBT's conduct throughout that proceeding was entirely consistent with its obligations under federal law.

Beginning in the mid-1970s, the Missouri PSC established extended local calling areas to accommodate the interests of consumers in St. Louis, Kansas City, and Springfield whose calling patterns often crossed local exchange boundaries. Over the years, the Missouri PSC continued to address the calling scope issue. Finally, in 1992, the Missouri PSC issued its Report and Order establishing the MCA service.⁴⁷ In this Order, the Missouri PSC defined the calling scope of the MCA service. The Missouri PSC structured the MCAs in tiers radiating out from the centers of St. Louis, Kansas City, and Springfield. In St. Louis and Kansas City, there are six tiers; in Springfield, there are three tiers. The Missouri PSC ordered MCA Service to be a mandatory service offering in the three central tiers in St. Louis and Kansas City, as well as the two central tiers in Springfield. The Missouri PSC determined that for most customers in these exchanges, MCA service would replace basic local service.

The Missouri PSC also determined that MCA service would be an optional service to which a customer could subscribe in the three remaining tiers in St. Louis and Kansas City, as well as in the one remaining tier in Springfield. Additionally, the Missouri PSC mandated the rates to be charged for MCA service. Since the local calling scope of an MCA subscriber includes local calling to other MCA subscribers, the MCA Plan uses dedicated NPA-NXX codes to identify MCA subscribers. This allows the network to identify whether a called party is an MCA subscriber and, thus, whether or not the call should be permitted to be locally dialed. See Hughes Reply Aff. ¶ 41.

⁴⁷ Report and Order, Establishment of A Plan for Expanded Calling Scopes in Metropolitan and Outstate Exchanges, Case No. TO-92-306 (MPSC Dec. 23, 1992).

With the passage of the 1996 Act, it became necessary to address how CLECs would participate in the MCA Plan. As Thomas Hughes describes in his Reply Affidavit, the issue of calling scope does not arise when CLECs serve customers in the mandatory area, where all customers in that area can call all other customers in the area. See Hughes Reply Aff. ¶ 46. It was only after CLECs expanded their service to the suburban and more rural markets where MCA service is “optional” that the determination of whether or not a customer is an “MCA subscriber” for calling scope purposes became an issue for CLECs like McLeodUSA. Id. The Missouri PSC opened a proceeding to address this issue. See id. ¶ 44. The incumbent LECs had been providing MCA service under a specific set of rules (e.g., prescribed prices, prescribed calling scopes, a prescribed bill-and-keep intercompany compensation arrangement, and dedicated NPA-NXX codes), and the MPSC had to determine whether these same terms and conditions would apply to the CLECs. Throughout the proceedings, SWBT supported CLEC participation in the MCA plan so long as all providers participated in the MCA plan under the same terms and conditions. Id. ¶ 44. The MPSC ultimately found “that CLECs should be allowed to participate in MCA service on a voluntary basis under the same terms and conditions that were ordered by the [Missouri PSC] for the [ILEC] in Case No. TO-92-306 with the exception of pricing.”⁴⁸

SWBT and other incumbent LECs required to provide MCA service modified their switches to include those customers designated as “MCA subscribers” in the local calling scopes of other MCA subscribers. When a SWBT MCA subscriber makes a call within the MCA area,

⁴⁸ Report and Order at 18-19, Investigation for the Purpose of Clarifying and Determining Certain Aspects Surrounding the Provisioning of Metropolitan Calling Area Service After the Passage and Implementation of the Telecommunications Act of 1996, Case No. TO-99-483 (MPSC Sept. 7, 2000) (“September 2000 MCA Order”) (App. G, Tab 74).

the switch must be programmed to determine whether or not the call should be locally dialed. Depending on where the MCA subscriber is calling to, it may only be a local call for the MCA subscriber to call other MCA subscribers. Similarly, if the MCA subscriber is calling another party who does not subscribe to MCA service, it may be outside the local calling scope of the MCA subscriber and therefore must be dialed as a toll call. See Hughes Reply Aff. ¶ 42. Prior to the Missouri PSC's order in September 2000 in Case No. TO-99-483, a CLEC such as McLeodUSA did not have customers who were MCA subscribers – i.e., customers who took the option of subscribing to MCA service. Therefore, certain calls to McLeodUSA's customers like certain calls to SWBT's and the other LEC's non-MCA subscribers were outside the local calling scope of the MCA subscriber. In other words, SWBT and other ILECs that were ordered to provide MCA service treated McLeodUSA's customers in the same manner as they treated any non-MCA subscribers, regardless of who their carrier was. SWBT has complied in full both with the Missouri PSC order establishing the MCA calling scopes and with the new Missouri PSC order determining that certain CLEC customers should also be considered MCA subscribers for MCA calling scope purposes.

In its September 2000 Order resolving the MCA issue, the Missouri PSC reasoned that the purpose of the MCA proceeding was “to determine the status of the MCA service from this point forward and therefore any damages sustained by what the CLECs allege was illegal action by the ILECs is more properly raised in a complaint case.”⁴⁹ Since that order, no CLEC has filed a complaint against SWBT claiming illegal action or seeking damages. On the contrary, in response to that Order, AT&T voluntarily withdrew a prior complaint that had been filed. See Hughes Reply Aff. ¶ 53.

⁴⁹ September 2000 MCA Order at 18 (App. G, Tab 74).

E. Nondiscriminatory Access to 911 and E911 services

SCC claims that SWBT accesses its 911 database on terms different from its competitors. See generally SCC Comments & Clugy Aff (filed May 4, 2001). For the reasons described below, SCC's claims are meritless, and this Commission should reject them.

As a preliminary matter, SCC has no legal basis to raise any concerns about 911 issues in this proceeding. SCC is not operating as a CLEC in Missouri and has not pointed to any instance where SWBT has failed to comply with its obligations under checklist item 7 in Missouri. Indeed, none of the anecdotal evidence to which SCC points in support of its claims involves conduct in Missouri. This Commission has stated that applications for section 271 relief occur on state-by-state basis, and issues of compliance with checklist items in other states are not relevant to a determination as to whether the BOC meets a requirement in the state in which it is seeking relief. See Texas Order, 15 FCC Rcd at 18528, ¶ 351 ("WorldCom's argument that SWBT's out-of-state directory assistance services are priced at an anticompetitive level is not relevant to a determination of whether SWBT meets checklist item 7 in Texas. For purposes of the instant application, we consider only whether SWBT meets the requirements of section 271 in the State of Texas.").

Furthermore, as the Reply Affidavits of William C. Deere and Linda G. Yohe demonstrate, SCC's substantive allegations are unfounded. See generally Deere Reply Aff. (discussing nondiscriminatory access to SWBT's database); Yohe Reply Aff. (discussing requirements of the FCC's E911 Forbearance Order⁵⁰). Contrary to SCC's assertions, SWBT does not update its subscriber information to the database system in a continuous fashion

⁵⁰ Memorandum Opinion and Order, Bell Operating Cos. Petitions for Forbearance from the Application of Section 272 of the Communications Act of 1934, as Amended, to Certain Activities, 13 FCC Rcd 2627 (1998).

throughout the day. In fact, SWBT updates its customer files twice a day on the SORD system, at 6:00 pm and at 3:00 am. In addition, there is a separate update from the CRIS system at midnight. CLECs have the capacity of updating their customer files up to ten times per day. See Deere Reply Aff. ¶¶ 4-6.

SCC also claims that SWBT has the capability of being notified immediately of errors in its subscriber records, while CLECs are only notified once a day. See SCC Comments at 4-5. Once again, SCC is wrong. CLECs are notified of errors in their customer files in the same manner as SWBT is notified. See Deere Reply Aff. ¶¶ 8-11. This is because both SWBT and the CLECs have the same ability to access error information for their customers at the completion of batch processing.

SCC also claims that CLECs do not enjoy the nondiscriminatory access to the 911 database, which is necessary to reconcile their local exchange records. See SCC Comments at 5. This is false. SWBT provides CLECs with the opportunity to update their record each time they submit records. See Deere Reply Aff. ¶¶ 13. SWBT also makes available a monthly electronic "compare file" that contains the subscriber information for the CLEC's customers. Id. In addition, SWBT is currently in the process of implementing a program that will provide CLECs with "direct-view-only" access to the CLEC's customer information in the 911 database. Id.

SCC makes a number of additional arguments in an attempt to convince this Commission to require SWBT to provide 911 services through a separate section 272 affiliate. SCC Comments at 6-7. Those arguments are meritless. First, this Commission has already decided to forbear from any requirement to create a separate affiliate for the provision of 911 services. See E911 Forbearance Order. Second, a section 271 application proceeding is simply not the appropriate forum to argue that SWBT has somehow failed to comply with the terms of the

Commission's E911 Forbearance Order. Third, the only anecdotal allegation that SCC presents in support of its claim that SWBT is not providing nondiscriminatory access to its listings involves SCC's claim that it lacks access to SWBT's selective routers. But the FCC has already ruled that access to E911 routing information has no bearing on its decision to grant forbearance. See E911 Forbearance Order, 13 FCC Rcd at 2647 ¶ 37. Moreover, SWBT and SCC are currently negotiating in Texas over access to selective routing. See Deere Reply Aff. ¶ 17. This section 271 proceeding is simply not the appropriate time and place to address SCC's selective routing concerns.

Finally, SCC is wrong to suggest that the M2A is flawed because it fails to accommodate the concerns of competitive providers of 911 database services. See SCC Clugy Aff. ¶ 10. Because SCC is a provider of 911 database services to CLECs and not a CLEC itself, the M2A simply does not apply to its business. SCC has a separate contractual arrangement with SWBT – the SCC Interoperability Agreement – that is specifically designed for competitive 911 service providers like SCC and includes many conditions and terms not available in the M2A. See Deere Reply Aff. ¶ 23. To the extent that SCC has issues with the interoperability agreement, it should take those up in the appropriate forum.

F. Performance Reporting and Remedy Plan

Only two commenters question the adequacy of SWBT's performance plan in Missouri. See AT&T Comments at 47-52; McLeodUSA Comments at 40-54. As one of them concedes, however, this plan is in all material respects a mirror image of the plans that this Commission approved for Texas, Kansas, and Oklahoma. See McLeodUSA Comments at 50; Texas Order, 15 FCC Rcd at 18560-64, ¶¶ 422-429; Kansas/Oklahoma Order ¶¶ 270-280. There can therefore

be no doubt that this plan meets this Commission's standards for an adequate incentive plan. See Dysart Reply Aff. ¶ 44.⁵¹

McLeodUSA contends that the liability at risk under SWBT's plan is too low, and that it should be increased to 44 percent of SWBT's annual net revenue in Missouri. The Commission has previously concluded, however, that a 36 percent figure – which the SWBT plan includes, see Dysart Aff. ¶ 19; Dysart Reply Aff. ¶¶ 45-46 – is sufficient to provide a meaningful incentive against backsliding. See Texas Order, 15 FCC Rcd at 18561, ¶ 424 n.1235; New York Order, 15 FCC Rcd at 4168, ¶ 436 & n.1332; Kansas/Oklahoma Order ¶ 274 n.837. McLeodUSA offers no persuasive reason why the Commission should change course here, and there is none.

McLeodUSA also objects to a series of “structural” elements of the penalty plan – including, for example, the per occurrence/per measurement structure, the Tier I/Tier II penalty scheme, and the non-self-executing nature of the penalties. See McLeodUSA Comments at 42-50. As the reply affidavit of William R. Dysart explains, however, these features have been fully vetted and approved in prior 271 applications before the Commission. See Dysart Reply Aff. ¶¶ 51-58. McLeodUSA provides no basis for revisiting those determinations here.

Finally, McLeodUSA claims that the Missouri plan includes statistical measures that improperly skew the results in SWBT's favor. See McLeodUSA Comments at 48. But the methodology by which SWBT designed its statistical tests – which is intended to take into account the random variation that may occur during the formulation of statistical results – was used in developing the approved Texas plan. To the extent that methodology is imperfect, moreover, it is skewed in favor of CLECs. See Dysart Reply Aff. ¶¶ 48-50. And, as this

⁵¹ As of May 11, 2001, a total of nine CLECs have filed “Notices of Adoption” of the M2A. See Sparks Reply Aff. ¶ 11. The Performance Remedy Plan is therefore in full force and effect.

Commission has explained, “the use of statistical analysis to take into account random variation in the metrics is desirable.” New York Order, 15 FCC Rcd at 4182, App. B ¶ 2 (emphasis added).

For its part, AT&T directs its fire primarily at Southwestern Bell's performance data. See AT&T Comments at 47-49. According to AT&T, because SWBT interpreted the business rule for a flow-through PM differently than AT&T would have, SWBT cannot rely on *any* of its reported data – not just for flow-through, but apparently for all of its performance measures. See AT&T Comments at 47-49. This outlandish claim finds no support anywhere. As an initial matter, as discussed above and in the reply affidavit of Randy Dysart, AT&T's allegations regarding the flow-through PM are simply wrong. See Part III.B, supra; Dysart Reply Aff. ¶¶ 35-39. And, in any event, even if those allegations were on-the-mark, they would have no bearing on the remainder of Southwestern Bell's performance data. As the Commission has held, “[w]here particular SWBT data are disputed by commenters,” that data should be examined in discussing the relevant checklist item. Texas Order, 15 FCC Rcd at 18378, ¶ 57. As discussed in its Application, and confirmed throughout these Reply Comments, SWBT's data conclusively establish compliance with each checklist item.

AT&T also uses its assertions regarding SWBT's flow-through data to challenge the validity of the Ernst & Young audit. AT&T Comments at 51. But that challenge likewise founders on the simple fact that AT&T's interpretation of the relevant business rule is wrong. See Dysart Reply Aff. ¶ 62. Moreover, as Southwestern Bell explained in its Application, SWBT's Missouri data is supported not just by the Ernst & Young audit – which, AT&T's protestations notwithstanding, amply supports the reliability of SWBT's data, see id. ¶¶ 60-71 – but also by the Telcordia data validation that the Commission approved in the Texas Order. See

15 FCC Rcd at 18564, ¶ 429 (“While Telcordia did make several recommendations regarding SWBT’s data control mechanisms, . . . SWBT has agreed to implement each of these measures.”).

Finally, AT&T contends that the fact that SBC has actually paid penalties under the numerous state and federal penalty plans to which it is subject somehow demonstrates that it is not subject to appropriate incentives to provide CLECs with nondiscriminatory service. See AT&T Comments at 50. Significantly, however, other CLECs made precisely the opposite argument before the Missouri PSC. See WorldCom’s Missouri PSC Comments at 59 (contending that SWBT’s purportedly “low” level of payments in Texas revealed shortcomings in the plan). The fact is that, as noted above, Southwestern Bell’s liability under the Missouri plan is equivalent to the liability approved by the Commission elsewhere, and, as the Commission has already held, that level of liability is fully sufficient to provide a “meaningful incentive for SWBT to maintain a high level of performance.” Kansas/Oklahoma Order ¶ 274.

CONCLUSION

For the reasons presented above and in its opening brief, Southwestern Bell respectfully requests that this application be granted.

Respectfully submitted,



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